(1)

Supreme Court, U.S.
FILED

981562 MAR 29 1999

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1998

IN RE ROLAND L. GOAD,

Petitioner,

Petition For Writ of Mandamus

ROLAND L. GOAD, Petitioner
310 Sara Lane
Huntsville, Texas 77340
(409) 291-2430
(pro se)

148

QUESTION PRESENTED

Should mandamus issue requiring the United States Court of Appeals For The Fifth Circuit to accept Petitioner's notice of appeal submitted to it by the Clerk of the United States District Court for the Southern District of Texas?

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IN THE

SUPREME COURT OF THE UNITED STATES

NO.

IN RE ROLAND L. GOAD, Petitioner

1. Roland L. Goad respectfully petitions this Honorable Court for a Writ of Mandamus requiring the United States Court of Appeals to accept notices of appeal from the United States District Court, Southern District of Texas that involve appeals by Petitioner.

CITATION TO ORDER BELOW

2. Petitioner requested leave to file petition for writ of mandamus requiring the clerk of the circuit court to accept notices of appeal from the Clerk of the United States District Court in Houston. Leave was denied. (Appendix "A").

PROCEEDINGS IN THE DISTRICT COURT

3. State-court action was brought in Walker County, Texas under the Uniform Declaratory Judgment Act. The case was removed to federal court on 5 December 1997 and dismissed on 3 March 1998 as punishment for Petitioner's failure to obtain consent of a federal judge prior to bringing the action in State court.

4. The claim for declaratory relief was re-filed in State court on 26 March 1998, 15 June 1998, and on 25 September 1998. In each instance these cases were also removed to federal court and dismissed on the basis of the preclusive effect of the 3 March 1998 dismissal of the first case. The most recent case was dismissed on 10 March 1999.

JURISDICTION IN THIS COURT

5. Section 1651(a) of Title 28, United States Code provides authority for this Court to issue all writs necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law.

STATUTES AND RULES APPLICABLE IN THIS CASE

28 U.S.C. § 1651(a):

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 2072:

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedures and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive rights. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

FED. R. APP. P. 12(a):

(a) Docketing the Appeal. Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

FED. R. APP. P. 25(a) (1):

(1) Filing with the Clerk. A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

FED. R. APP. P. 25(a) (4):

Clerk's Refusal of Documents. The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

FED. R. APP. P. 45(b) (1):

(1) The Docket. The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all process, orders, and judgments.

REASON WRIT OF MANDAMUS SHOULD ISSUE

6. The Rules Enabling Act authorizes this Court "to prescribe general rules of practice and procedure . . . for cases in the United States . . . courts of appeals." and Section 2072(b) directs that:

> "Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect."

Henderson v. United States, 517 U.S. 654, 663-4 (1996).

7. The Federal Rules are:

> "as binding as any statute duly enacted by Congress, and federal courts have no more discretion to disregard [a Rule's] mandate than they do to disregard constitutional or statutory provisions."

Bank of Nova Scotia v. United States, 487 U.S. 250, 255 (1988).

8. The writ of mandamus is subject to the legal and equitable discretion of this court, and it ought not to be issued in cases of doubtful right. But it is the only adequate mode of relief when an inferior tribunal refuses to act upon a subject brought properly before it. *In re Life and Fire Ins. Co. of N. Y. v. Wilson's Heirs*, 8 Peters (33 U.S.) 291, 302-303 (1834).

> ". . . [W]here the subject concerns the enforcement of the . . . [r]ules which by law it is the duty of this Court to formulate and put in force mandamus should issue to prevent such action thereunder so palpably improper as to place it beyond the scope of the rule involved."

LaBuy v. Howes Leather Co., 352 U.S. 249, 256 (1957) (*citing Los Angeles Brush Corp. v. James*, 272 U.S. 701, 706 (1927)).

RELIEF REQUESTED

9. Petitioner respectfully urges this Honorable Court to issue a writ of mandamus requiring the United States Court of Appeals For The Fifth Circuit to accept notices of appeal submitted to that Court from the Clerk of the United States District Court for The Southern District of Texas in Houston, involving cases on appeal by Petitioner.

Respectfully submitted.

ROLAND L. GOAD

310 Sara Lane

Huntsville, Texas

77340-6764

(409) 291-2430

Petitioner (pro se)

App. A 1a

Order of the United States Court of Appeals For

The Fifth Circuit filed 2 March 1999 denying

leave to file petition for writ of mandamus

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 99-00014

IN RE: ROLAND LEE GOAD,

Petitioner.

Application for Permission to File

Petition for a Writ of Mandamus

ORDER:

IT IS ORDERED that the letter/

application of Roland Lee Goad for permission

to file a petition for writ of mandamus is DENIED.

(signed)

JACQUES L. WIENER, JR.

United States Circuit Judge

Letter to Chief Judge Carolyn D. King,

mailed on 16 February 1999:

Chief Judge
CAROLYN D. KING
11020 U.S. Courthouse
515 Rusk Street
Houston, TX 77002-2694

Your Honor:

Because the clerk of your court refuses to accept for filing or to assign a docket number to any case involving me, I am sending this original petition for a writ of mandamus to your office.

I am confident he will accept for filing this case if he receives it from you.

* * * * *

Respectfully,

ROLAND L. GOAD

Letter dated 15 July 1998 from Clerk, U.S. Court of Appeals refusing to accept for filing two (2) notices of appeal received from the United States District Clerk for the Southern District of Texas, Houston:

July 15, 1998

Michael Milby, Clerk
Southern District of Texas, Houston
United States District Court
515 Rusk Ave.
Room 5300
Houston, TX 77002-2694

USDC No. CA-H-98-1170 - Goad v. Dept. of Defense

USDC No. CA-H-97-3975 - Goad v. Dept. of Defense

Dear Mr. Milby:

On July 14, 1998 and July 15, 1998, this office received the enclosed notices of appeal of the above referenced cases. However, on January 18, 1991, April 30, 1992 and January 7, 1994 this court sanctioned Mr. Goad. The January 18, 1991 sanction stated:

> "We further direct all clerks of court under the jurisdiction of this court to refuse to accept further filing from Roland Lee Goad which in any way involve the payment of a portion of his Air Force Retirement benefits to his former wife unless a judge of this court, or a judge of the forum district, first specifically authorizes the filing."

Additionally, the January 7, 1994 order sanctioned Mr. Goad $200.00 for ignoring the previous sanction of January 18, 1991. It stated:

> "... sanctioned $200.00 for ignoring previous sanction; clerks reminded not to accept pleadings. ... "

In light of these sanction orders, we are returning to you, unfiled, the notices of appeals forwarded to this office.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: L. Higgins, Deputy Clerk